



September 25, 2000

Mr. Lee Vickers  
Overstreet, Winn & Edwards  
County of Hays  
1209 West 5<sup>th</sup> Street  
P. O. Box 2191  
Austin, Texas 78768

OR2000-3698

Dear Mr. Vickers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139339.

The Hays County Appraisal District (the "district"), which you represent, received a request for information which seeks in pertinent part "applications for wildlife management appraisals" for the years 1998, 1999, and 2000 submitted to the district pursuant to section 23.54 of the Tax Code, including "supporting documentation." You explain that 50-75 wildlife management plans are responsive to the request, in that they were submitted to the district as "supporting documentation."<sup>1</sup> You have submitted one such plan as a sample for our review, and you assert this information is excepted from disclosure under sections 552.101 and 552.110<sup>2</sup> of the Government Code. The requestor has also submitted comments to this office. *See Gov't Code* § 552.304. We have considered the exceptions you assert and reviewed the submitted information.<sup>3</sup>

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<sup>1</sup>The request encompasses additional categories of information. We assume the district has released to the requestor the information that is responsive to the request, other than the wildlife management plans for which you have sought our decision.

<sup>2</sup>In your July 20, 2000 correspondence to this office, you reference section 552.103 of the Government Code (the "litigation exception") in the context of comments about "trade secrets" and "information which might serve to give a competitor an advantage." Because you make no mention of litigation, we understand your comments to assert section 552.110 and not section 552.103. *See Gov't Code* §§ 552.103, .110.

<sup>3</sup>In reaching our conclusion here, we assume that the "representative sample" submitted to this office is truly representative of the requested records as a whole that you seek to withhold. *See Open Records*

Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply "not later than the 10<sup>th</sup> business day after the date of receiving the written request." In Open Records Decision No. 663 (1999), this office addressed the 10 business day time limit of section 552.301(b) in situations whereby a governmental body, in good faith, seeks clarification or narrowing of a public information request. See Open Records Decision No. 663 at 5 (1999). In this instance, because we are not advised of whether or when the district requested clarification from the requestor, we are unable to ascertain whether the district has complied with the ten business day time limit of section 552.301(b). Pursuant to section 552.302 of the Government Code, if a governmental body fails to request a decision of this office as provided by section 552.301, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." See Gov't Code § 552.302. This office has long held that a "compelling reason" to withhold information exists, sufficient to overcome the section 552.302 presumption of openness, where the information at issue is made confidential by another source of law. Open Records Decision Nos. 26 (1974), 150 (1977). Likewise, this office has found that a section 552.110 assertion may constitute a compelling reason sufficient to overcome the section 552.302 presumption of openness. Open Records Decision No. 552 (1990). Accordingly, we shall address the section 552.101 and 552.110 assertions.

We first address the section 552.101 assertion. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You explain that the information at issue was marked "confidential" by the person who submitted it to the district. We note that a governmental body's promise to keep confidential information that is subject to the Public Information Act is not a basis for withholding the information from the public, unless the governmental body has specific statutory authority to keep the information confidential. Open Records Decision Nos. 514 (1988), 479 (1987), 444 (1986). Thus, information subject to the Public Information Act is not confidential simply because the party submitting it anticipates or requests that it be kept confidential. You contend that the information in this instance is made confidential by section 22.27 of the Tax Code. This provision states in pertinent part:

Rendition statements, real and personal property reports, attachments to those statements and reports, and other information the owner of property provides to the appraisal office *in connection with the appraisal of the property*, including income and expense information related to a property filed with an

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Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

appraisal office and information voluntarily disclosed to an appraisal office or the comptroller about real or personal property sales prices after a promise it will be held confidential, are confidential and not open to public inspection. The statements and reports and the information they contain about specific real or personal property or a specific real or personal property owner and information voluntarily disclosed to an appraisal office about real or personal property sales prices after a promise it will be held confidential may not be disclosed to anyone other than an employee of the appraisal office who appraises property except as authorized [by section 22.27(b)].

Tax Code § 22.27(a) (emphasis added). We understand, however, that the information at issue was submitted to the district pursuant to section 23.54 of the Tax Code, in connection with an application for the property to be designated open-space land. *See* Tax Code § 23.54. Our review of the submitted sample indicates that it contains no information as to the appraised value or sales price of real or personal property. We accordingly do not believe the information was submitted to the district *in connection with the appraisal of the property*, as contemplated in the above-cited language. Thus, we conclude that the information at issue is not made confidential by section 22.27 of the Tax Code and thereby excepted from required public disclosure under section 552.101 of the Government Code. We next address the section 552.110 assertion.

Section 552.110 protects the interests of third parties by excepting from disclosure two types of information: (1) trade secrets, and (2) certain commercial or financial information. *See* Gov't Code § 552.110. You do not assert that the information constitutes or contains trade secrets. You state that the wildlife management plans at issue are often "prepared by a commercial preparer, for a fee." In support of the applicability of section 552.110, you state only that "the commercial preparer . . . has a vested interest in not having its work product copied by a competitor or used by property owners without compensation." This assertion alone, however, does not demonstrate by specific facts that substantial competitive injury to a third party would likely result from public disclosure of the information. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure). Furthermore, it does not appear that the district has notified any of the third parties of the present request for their information. *See* Gov't Code § 552.305(d). We have received no arguments from any third party as to the applicability of section 552.110 to the information. We thus conclude that the information at issue is not excepted from required public disclosure by section 552.110.

In summary, because you have not demonstrated that the information the district has withheld from the requestor is excepted from required public disclosure by section 552.101, and because section 552.110 also has not been demonstrated to apply to the information, we

find that the district must release to the requestor, in its entirety, the information that is responsive to the request.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

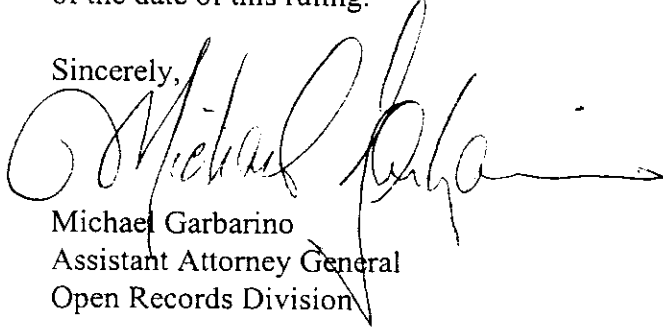
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", with a long horizontal flourish extending to the right.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/pr

Ref: ID# 139339

Encl. Submitted documents

cc: Mr. Roger D. Darley  
4001 Amy Circle  
Austin, Texas 78759  
(w/o enclosures)